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No. _____

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

JAMES BATES, GREGORY TAYLOR,
and CHRISTIAN CASTELAW,

Petitioners

v.

GERALD C. BRUNER,

Respondent

**ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The question presented for review is whether or not a defendant in an action under 42 U.S.C. §1983 may be held liable where there is no proof of personal involvement in the alleged deprivation of the plaintiff's civil rights.

PARTIES

The parties to the proceeding in the Court of Appeals for the Sixth Circuit were: Gerald C. Bruner (plaintiff in the District Court) and James Bates, Gregory Taylor, Christian Castelaw, Wade Dunaway, James Humphrey, Richard Ingram, Steve Tinder, and Rick Fretz (defendants in the District Court).

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OPINIONS BELOW

The opinion of the Court of Appeals for the Sixth Circuit is reported at 684 F.2d 422. There is no District Court opinion.

JURISDICTION OF THIS COURT

Petitioners seek review of a judgment of the Court of Appeals for the Sixth Circuit made and filed August 11, 1982. Jurisdiction to review the judgment of the Court of Appeals is conferred on this Court by 28 U.S.C. § 1254.

STATUTE INVOLVED

This case involves 42 U.S.C. § 1983, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a Statue of the District of Columbia.

STATEMENT OF THE CASE

This case arises out of an incident which occurred during the early morning hours of April 23, 1979, in Knoxville, Tennessee. The parties' versions of what happened are sharply conflicting in many respects, but some facts are undisputed and are as follows.

While on routine patrol at 2:00 a.m.. Knoxville police officer Steve Tinder came upon a car parked in back of a city school. He looked inside the car and observed 25-year-old Gerald Bruner, apparently unconscious. Officer Tinder aroused Bruner and asked him to step outside the car. A scuffle ensued, and Bruner fled. Officer Tinder radioed for help and remained for the time being with his and Bruner's cars.

Petitioners, Officer James Bates, Officer Gregory Taylor, and Explorer Scout Christian Castelaw, were nearby on their way home from the police station when they heard Tinder's call for

help. They searched for Bruner on foot, spotted him, and chased him. Castelaw caught up with Bruner in an alley, and the two scuffled. Taylor and Bates arrived and helped Castelaw subdue Bruner.

Next, Officer James Humphrey arrived on the scene. Bruner, though being held face down on the ground by petitioners, was still thrashing about. Humphrey offered his handcuffs to the off-duty officers, who had none.

After Bruner was handcuffed, Officer Tinder and Officers Richard Ingram, Rick Fretz, and Wade Dunaway arrived on the scene. Because Bruner had blood on his face, an ambulance wa called. Officers Tinder and Fretz began to try to take the still struggling Bruner up the alley to where the ambulance would arrive, a distance of some 60 yards. Petitioners stayed behind to search for a radio and flashlight lost in the scuffle with Bruner. Bruner was eventually taken to the end of the alley and into the ambulance. Officer Tinder rode with him to the hospital.

At the hospital Bruner was found to have sustained, in addition to minor cuts and bruises, a depressed skull fracture on the right side. The skull fracture resulted in post-traumatic epilepsy, and some loss of brain function.

Bruner filed suit in the United States District Court for the Eastern District of Tennessee against all seven officers and Scout Castelaw, alleging a violation of 42 U.S.C. §1983. The case was tried twice. In neither trial was Bruner able to say which defendant, if any, inflicted the blow which fractured his skull. All defendants denied hitting Bruner on the right side of the head.

The first trial resulted in a jury verdict against all defendants. The District Judge granted the defendants a new trial. At the close of the second trial, the Court directed verdicts in favor of Officers Dunaway, Humphrey, and Ingram. The jury exonerated Officers Fretz and Tinder, but found against petitioners.

Both Bruner and petitioners appealed to the Court of Appeals for the Sixth Circuit. The Court of Appeals affirmed the judgment of the District Court.

Petitioners are seeking review in this Court of that portion of the judgment below holding them liable to Bruner under 42 U.S.C. §1983.

ARGUMENT

Liability under 42 U.S.C. §1983 requires personal involvement in a deprivation of civil rights. *Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 (1976). In the case of non-supervisory persons such as petitioners, even the most liberal cases require actual commission of the wrongful act or presence while it was being done. *Byrd v. Brishke*, 466 F.2d 6 (7th Cir. 1972).

There is no proof in this case as to which of the eight defendants, if any, inflicted the blow to Bruner's skull. Nor can it be deduced that any particular defendant was present when the injury occurred, since it is not known when the blow to Bruner's skull was inflicted and no defendant was with Bruner throughout the incident in question. Petitioners, for example, did not witness the initial scuffle with Tinder nor the transporting of Bruner up the alley to the ambulance. The presence of blood on Bruner's face after his scuffle with petitioners is immaterial, since Bruner's doctor testified that the skull blow did not break the skin. Moreover, the doctor testified that the skull injury would have rendered Bruner unconscious, and Bruner testified that he was conscious throughout his contact with petitioners.

Thus, there is no proof from which the jury could legitimately find that any one of the eight defendants either fractured Bruner's skull or was present while it was being done. This case goes beyond even cases like *Byrd v. Brishke, supra,* in which it was shown at least that certain officers were present while a beating occurred.

Plaintiff Bruner's injury was serious and unfortunate, but that is obviously no justification for singling out three defendants either at random or by speculation. The decision of the Court of Appeals is in conflict with all precedent in this important area of federal law. Petitioners respectfully urge that such a case merits review by this Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of this petition have been served upon Norbert J. Slovis, Esq., and William S. Zwick, Esq., attorneys for respondent in this proceeding by placing same in the United States Mail with sufficient postage directed to their respective office addresses on this the 12th day of November, 1982.